



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
BECK/ARNLEY CORP. OF CALIFORNIA)

For Appellant: Barry Schwartz
Certified Public Accountant

For Respondent: Claudia K. Land
Counsel

O P I N I O N

This appeal is made pursuant to section 25666 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Beck/Arnley Corp. of California against proposed assessments of additional franchise tax in the amounts of \$3,652.00, \$13,995.00, and \$15,588.00 for the income years 1969, 1970, and 1971, respectively.

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The issue for determination is whether appellant and its parent, Beck/Arnley Corp. of New York (hereinafter referred to as "BANY"), were engaged in a single unitary business during the years on appeal.

Appellant, a wholly owned subsidiary of BANY since 1965, was incorporated in California in 1954 under the name of British Auto Parts of Southern California, Inc. Originally, appellant was independently owned and operated as a regional distributor pursuant to an exclusive marketing agreement with British Auto Parts, Inc., of San Francisco. In 1956, appellant terminated that agreement and became the exclusive Southern California distributor for BANY's predecessor, Beck Distributing Corp. (hereinafter referred to as "Beck"). During this period, it operated under the name of Brigham-St. John, Inc. After six years, appellant terminated its agreement with Beck and again became the exclusive agent of British Auto Parts, Inc. In 1965, appellant was acquired by Beck in a stock-for-stock tax-free reorganization. Beck, a New York corporation founded in 1927, merged with Arnloy Industries, Inc., and two related companies in 1969 to form BANY. During the years in issue, two of appellants' three directors were also directors of BANY; appellant's president served as vice president of BANY, and the latter's president was a director of appellant.

At the time of its acquisition by BANY, appellant purchased over \$1,000,000 of inventory from its parent; this purchase was financed by means of an interest bearing note. Depending upon its financial situation, appellant would make monthly payments of varying amounts on the note; when unable to make a payment, appellant's parent did not press for payment. As of the end of the last income year in issue, the balance remaining on the note totaled \$418,925. The loan from its parent was evidently a one-time occurrence; appellant has subsequently acquired financing from local sources.

Appellant and BANY, which share the Beck/Arnley name and trademark, engage in what are seemingly similar businesses. Appellant is involved in the sale of new automobile parts and accessories, as well as the marketing of rebuilt automobile parts acquired from its parent's rebuilding facility in Pittsburgh, Pennsylvania; approximately 10-15 percent of appellant's income is derived from the sale of rebuilt parts. In addition to the above activities, BANY is also involved in the

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remanufacture of automobile replacement parts and the distribution and sale of motorcycle parts and accessories.

Most of appellant's inventory was, at least during the first two of the three appeal years, acquired from BANY which, prior to 1971, did most of the overseas purchasing of new auto parts to be marketed by appellant. Towards the end of the period in issue, appellant purportedly began to make its foreign purchases directly. As noted above, appellant also purchases and markets parts from its parent's Pittsburgh rebuilding facility; approximately 10-15 percent of its total purchases originate from this source. Additionally, appellant occasionally sends parts to the Pittsburgh facility to be rebuilt; it receives a credit for these transactions. On occasion, appellant and BANY fill the other's out-of-state orders from their own inventories; less than four percent of appellant's sales are made in this manner.

The two affiliated corporations shared a number of essential services during the appeal years. Specifically, appellant relied upon what it has described as BANY's "sophisticated foreign purchasing department" to supply its need for new automobile parts and accessories. As previously noted, appellant claims that it began direct ordering of such items in 1971. Appellant has also acknowledged that, as its business is identical to that of its parent in certain aspects, the two affiliated corporations pooled their efforts in research and development, computer processing, catalog production, and purchasing; savings resulted to both corporations as a consequence of these combined efforts. Finally, the Beck/Arnley advertising program was, and remains, a cooperative one. Appellant is billed by BANY for its share of the advertising of Beck/Arnley products.

When a taxpayer derives income from sources both within and without California, it is required to measure its California franchise tax liability by its net income derived from or attributable to sources within this state. (Rev. & Tax. Code, § 25101.) If the taxpayer is engaged in a unitary business with an affiliated corporation or corporations, its California tax liability must be determined by applying an apportionment Formula to the total business income derived from the combined unitary operations of the affiliated companies. (See Edison California Stores, Inc. v. McColgan, 30 Cal.2d 472 [183 P.2d 16] (1947); John Deere

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Plow co. v. Franchise Tax Board, 38 Cal.2d 214 [238 P.2d 5691 (1951)], app. dism., 343 U.S. 939 [96 L.Ed. 13451 (1952).]

The California Supreme Court has determined that a unitary business is definitely established by the existence of: (i) unity of ownership; (ii) unity of operation as evidenced by central purchasing, advertising, accounting, and management divisions; and (iii) unity of use in a centralized executive force and general system of operation. (Butler Bros. v. McColgan, 17 Cal.2d 664 [111 P.2d 334] (1941), affd., 315 U.S. 501 [86 L.Ed. 991] (1942).) The supreme court has also held that a business is unitary when the operation of the business within California contributes to or is dependent upon the operation of the business outside the state. (Edison California Stores, Inc. v. McColgan, supra.) These principles have been reaffirmed in more recent cases. (Superior Oil Co. v. Franchise Tax Board, 60 Cal.2d 406 [34 Cal.Rptr. 545, 386 P.2d 331 (1963)]; Honolulu Oil Corp. v. Franchise Tax Board, 60 Cal.2d 417 [34 Cal.Rptr. 552, 386 P.2d 40] (1963).) The existence of a unitary business may be established if either the three unities or the contribution or dependency test is satisfied. (Appeal of Browning Manufacturing Co., et al., Cal. St. Bd. of Equal., Sept. 14, 1972; Appeal of F. W. Woolworth Co., Cal. St. Bd. of Equal., July 31, 1972.)

In concluding that appellant and BANY were engaged in a single unitary business under either the contribution or dependency test or the three unities test, respondent relied principally on the following factors: BANY's ownership of appellant; an integrated executive force which controlled appellant's major policy decisions; the operation of similar businesses by appellant and BANY and the sharing of "know-how" between the two affiliated corporations; intercompany financing; intercompany sales; common name and trademark; and certain centralized functions (e.g., common advertising).

Appellant either acknowledges, or does not dispute, respondent's contentions that: (i) during the appeal years, it relied upon unusually favorable financing obtained from its parent in 1965; (ii) sales between the affiliated corporations were of a substantial quantity; (iii) it shared a 'common name and trademark with BANY; (iv) the exchange of "know-how" between the two affiliated corporations contributed to the overall success of their respective operations: and

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(v) the two affiliated corporations shared a number of essential services. It disputes, however, respondent's conclusions that: (i) its business was similar to that of its parent; and (ii) the presence of the integrated executive force constitutes evidence of centralized management. While appellant acknowledges that it is currently engaged in a single unitary business with BANY, it argues that, during the years in issue, its operations remained virtually unchanged from the manner in which it functioned prior to its acquisition by BANY.

Appellant claims that, since it was not involved in rebuilding or remanufacturing automobile parts or in the marketing of motorcycle parts, as was BANY, it was not involved in the same business as was its parent. Both corporations, however, derived a substantial portion of their income from the sale and distribution of new automobile replacement parts. We cannot agree with appellant's contention that the other activities engaged in by its parent justify a finding that the two corporations were engaged in different businesses. As to what appears to have been the most significant aspect of their respective businesses, i.e., the sale and distribution of new automobile replacement parts, the operations of the two affiliated corporations were admittedly identical. Given the similar nature of their operations, they were able to effectively pool efforts on purchasing, research and development, catalog production, and advertising. Were the activities of the two corporations essentially different, such cooperation would not have been as economical as appellant has conceded.

While appellant acknowledges the presence of an integrated executive force between itself and its parent, it disputes respondent's conclusion that this constitutes evidence of centralized management. It asserts that Mr. St. John, its president and founder, makes "all management decisions regarding the day-to-day operations" of appellant. As was noted by the court in Chase Brass & Copper Co. v. Franchise Tax Board, 10 Cal.App.3d 496 [87 Cal.Rptr. 239] app. dismiss. and cert. den., 400 U.S. 961 [27 L.Ed.2d 3811 (1970)], major policy decisions are the focus of the inquiry as to whether the executive force of an affiliated group is integrated. By appellant's own admission, any decision of a major policy nature taken by appellant required the affirmative action of at least one of the two directors of BANY; the conclusion that all of appellant's major

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policy decisions were made under the direction and control of its parent is unavoidable.

As previously indicated, appellant acknowledges that it is currently engaged in a single unitary business with its parent. It argues, however, that, during the years in issue, it operated in substantially the same manner as it had prior to its acquisition by BANY. While appellant claims that, from 1969 through 1974, its operations were gradually integrated with those of its parent, it maintains that the appeal years constituted part of a "transition period" during which the affiliated corporations were not unitary. To support this proposition, appellant relies upon the purported existence of independent inventory control and computerized accounting systems and the assertion that it was responsible for its own purchasing during the appeal years.

Initially, it must be noted that appellant has failed to present any competent or relevant evidence to support its assertions. In fact, with regard to its contention that it was responsible for its own purchasing, appellant's unsupported assertion conflicts with its admission that it relied upon its parent's foreign purchasing department to supply automobile parts and accessories. At most, the record on appeal indicates that appellant ordered needed supplies from its parent which, in turn, furnished those supplies for its affiliate. Finally, it should be noted that even if appellant had established that it maintained independent inventory control and computerized accounting systems, those factors would not, in and of themselves, establish that the affiliated corporations were not engaged in a single unitary business. Lack of a centralized accounting system, for example, will not result in a finding that an entire business operation is not unitary. (Cf. Appeal of Simco, Incorporated, Cal. St. Bd. of Equal., Oct. 27, 1964.)

In numerous prior cases, the unitary features relied upon by respondent, when viewed in the aggregate, have demonstrated a degree of mutual dependency and contribution sufficient to compel the conclusion that a unitary business existed. (See, e.g., Chase Brass & Copper Co. v. Franchise Tax Board, supra; Appeal of Harbison-Walker Refractories Company, (on rehearing), Cal. St. Bd. of Equal., Feb. 15, 1972; Appeal of Williams Furnace Co., Cal. St. Bd. of Equal., Aug. 7, 1969; Appeals of Simonds Saw and Steel Company, et al.,

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Cal. St. Bd. of Equal., Dec. 12, 1967; Appeal of Anchor Hocking Glass Corporation, Cal. St. Bd. of Equal., Aug. 7, 1967.) Respondent's determination that appellant is engaged in a unitary business with BANY is presumptively correct, and the burden to show that such determination is erroneous is upon appellant. (Appeal of John Deere Plow Co. of Moline, Cal. St. Bd. of Equal., Dec. 13, 1961.)

We believe that the unitary features cited by respondent satisfy the three unities test and that those same features, when viewed in the aggregate, demonstrate a degree of mutual dependency and contribution sufficient to establish the existence of a unitary business operation by appellant and its parent.

Appellant contends that it is not involved in a unitary business with BANY and challenges the subject assessments on the basis that two of the three elements of the three unities test (i.e., the unities of use and operation) are not present in the activities of the two affiliated corporations. Appellant, however, has not offered the factual evidence needed to support its contention; it simply asserts that the only unity present is that of ownership. Thus, in the absence of some compelling reason to invalidate respondent's determination, we must conclude that appellant has failed to carry its burden of proof and that respondent's action in this matter was correct.

It should also be noted that appellant has argued only that the three unities test has not been satisfied and has completely ignored respondent's reliance upon the contribution or dependency test to establish that appellant and BANY were engaged in a single unitary business during the years on appeal. As noted above, a business is unitary when the operation of the business within California contributes to or is dependent upon the operation of the business outside the state. (Edison California Stores, Inc. v. McColgan, supra.) A showing that the contribution or dependency test has been satisfied is, on its own, sufficient to show the existence of a unitary business. (Appeal of F. W. Woolworth Co., supra.) Consequently, even if appellant had carried its burden of showing that the three unities test had not been satisfied, its failure to carry its burden of proof as to the contribution or dependency test would alone be fatal to its position. (Appeal of L & B Manufacturing Company, Cal. St. Bd. of Equal., Nov. 18, 1980.)

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O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 25667 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Beck/Arnley Corp. of California against proposed assessments of additional franchise tax in the amounts of \$3,652.00, \$13,995.00, and \$15,588.00 for the income years 1969, 1970, and 1971, respectively, be and the same are hereby sustained.

Done at Sacramento, California, this 29th day of September, 1981, by the State Board of Equalization, with Board Members **Mr. Dronenburg**, **Mr. Reilly**, and **Mr. Nevins** present.

Ernest J. Dronenburg, Jr. _____, Chairman

George R. Reilly _____, Member

Richard Nevins _____, Member

_____, Member

_____, Member